

BIRNBERG & ASSOCIATES  
CORY A. BIRNBERG (SBN 105468)  
703 Market Street Suite 600  
San Francisco, California 94103  
Telephone Number: (415) 398- 1040  
Facsimile Number: (415) 398-2001

Barbara Norris (Ak. No. 8506070)  
LAW OFFICES OF BARBARA NORRIS  
645 W. Third Ave.  
Anchorage Alaska 99501  
Telephone Number: (907) 279-6621  
Facsimile Number: (907) 279-0199

Attorneys for Defendants  
Woodbine Alaska Fish Company,  
and Guy Ferrari Inc.

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

CITICAPITAL COMMERCIAL CORP,  
Plaintiff,  
v.

**Case No. A-04-0147 CI**  
**IN ADMIRALTY**

EGEGIK SPIRIT, official number 2999957,  
her equipment, gear, furniture, apparel,  
fixtures, tackle, boats, machinery, anchors  
and all appurtenances, in rem;

NAKNEK SPIRIT, official number 585824,  
her equipment, gear, furniture, apparel,  
fixtures, tackle, boats, machinery, anchors  
and all appurtenances, in rem;

WOODBINE ALASKA FISH CO.,  
in personam; and GUY FERRARI, INC,  
in personam.

**DEFENDANTS AND CROSS-  
COMPLAINANTS' OBJECTION  
AND MOTION FOR  
RECONSIDERATION OF  
PLAINTIFF'S SECOND  
MOTION FOR EXTENSION OF  
TIME**

Defendants,

**BIRNBERG &  
ASSOCIATES**  
703 MARKET STREET  
SUITE 600  
SAN FRANCISCO  
CA, 94103  
TEL (415) 398-1040  
FAX (415) 398-2001

1 Now come Defendants Woodbine Alaska Fish Company for itself, and on behalf  
 2 of its vessel, the Egegik Spirit, and hereby object to the Court's order granting Plaintiff's  
 3 second motion for extension of time.

4 NOTICE is hereby given that Defendants Guy Ferrari, Sr. and Virginia Ferrari  
 5 hereby move this Court for reconsideration on the grounds that Plaintiff motion was not  
 6 filed pursuant to local rule 7.2(c) (shortened time) or on an *ex parte* basis and that

7 **Defendants have a right to oppose a motion before the Court rules on it.**

8 This motion is based upon this notice of motion, the memorandum of points and  
 9 authorities, and any other matter of which this Court wishes to take judicial notice.  
 10

11 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
 12 **RECONSIDERATION**

13 **BACKGROUND**

14 The deadline for filing any objections to the initial magistrate recommendations  
 15 was February 15, 2006. Plaintiff filed none. The recommendation extended further time to  
 16 file any response to an objection until the 23<sup>rd</sup> of February (additional time from the five  
 17 days for a total of eight days, or three more days).  
 18

19 The only time period proscribed by Local Rule 12(C) for filing of objections and  
 20 responses is after (1) the initial recommendations; (2) before the matter is transferred; and  
 21 (3) as provided by the magistrate. It was therefore procedurally incorrect for Plaintiff to  
 22 object to the final recommendation after it had been referred back to the judge, or  
 23 otherwise, when the specific orders of the magistrate had not provided for it. This matter  
 24 was referred to the Judge and was no longer appropriate for objection. This Court has  
 25 already generously extended the amount of time provided by Local Rule 12(C) for  
 26 responses to objections, allowing eight days, to February 23, 2006. This Court has also  
 27  
 28

1 generously already granted Plaintiff an extension of time, giving Plaintiff exactly the  
 2 amount of time Plaintiff requested. Now Plaintiff moves again for even more time in a  
 3 motion, not filed on an *ex parte* basis, and this Court ruled on it without permitting an  
 4 opposition.

### 5 ARGUMENT

6  
 7 Local Rule 7.1(e) **states:** “Unless otherwise ordered by the court, provided by  
 8 statute, or rule, an opposition must be served and filed within fifteen (15) days of service of  
 9 the motion, and replies within five (5) days of service of the opposition.” Here the Court  
 10 ruled on the motion within one day of its having been filed (two hours in reality), before  
 11 Defendants had an opportunity to file the opposition they **had already started**. Procedural  
 12 rules must be adhered to, and basic equity demands that both parties be heard on motions.  
 13 Defendants wish this Court to reconsider its ruling and, at least, put *some* limitation on  
 14 Plaintiff’s ability to request extensions unilaterally, indefinitely, and without Defendants’  
 15 right to be heard on the matter. From Defendants’ standpoint, Plaintiff files a motion and its  
 16 ruled on in two hours without even giving Defendant’s a chance to reply. There was no  
 17 motion to shorten time, or *ex parte*, and this is the second time the court has ruled without  
 18 following motion rules and the 11<sup>th</sup> extension requested by Plaintiff. (The first motion to  
 19 extend to object to the Final Recommendations was also ruled upon before the expiration of  
 20 the motion time period. There is a very uneasy feeling in Defendants “camp” there is some  
 21 unspoken bias toward defendants. There is no provision for objection to Final  
 22 Recommendations, and the local rules are clear that motions have a discreet reply date.

23  
 24 With respect to the underlying motion, Plaintiff argues that it inadvertently deleted  
 25 the email noticing objections, casually glossing over the fact that ***it has two separate email***  
 26 ***addresses on the recipient list,*** ( and if one was deleted why was not the other email and  
 27  
 28

1 email account looked out. Plaintiff's original excuse that the email was inadvertently  
 2 deleted just does not appear credible); and Plaintiff's argument is silent on why it did not  
 3 go to the "recycle bin" to retrieve it, or check the court's docket as any prudent litigator  
 4 would do when expecting something from opposing counsel, or verify with them that  
 5 nothing had been filed once their deadline had passed. Given this highly contested case, it  
 6 would seem naïve to not expect that something must be filed on the 23<sup>rd</sup>, the last day for a  
 7 response.  
 8

9 Plaintiff agreed in its contract with the court to be bound by e-filing notice (Rule  
 10 5.3(2)(B)). This is *yet another* delay in the entire process, with ***over eleven requests for***  
 11 ***continuances*** and/or requests of counsel to stipulate to additional time prior to this by  
 12 Plaintiff, at least one of which was requested *after the deadline had passed*. The subject  
 13 motion for summary judgment was filed on ***May 26, 2005***, and it is still ongoing *ten*  
 14 *months later*. It is ironic that when Defendants' counsel had a medical emergency, and  
 15 required an extension of time for the deposition of Joe Pitch, counsel for Plaintiff only gave  
 16 him two days, and accused Defendants of unnecessary delay.  
 17

18 Defendants oppose further undue delay by Plaintiff's tardy pleadings, repetitive  
 19 and numerous and increasingly incredible requests for extension of time, even requesting  
 20 oral argument after it has already been denied by this Court. If Plaintiff's counsel is unable  
 21 to meet now *twelve* separate deadlines throughout this matter without special  
 22 accommodation by opposing counsel and/or this Court, Defendants respectfully submit that  
 23 Plaintiff is not competent to represent his client in this matter.  
 24

### 25 CONCLUSION

26 Defendants respectfully request that this Court maintain its Final  
 27 Recommendations and refer the matter back to the Judge, save and except the clerical  
 28

1 correction as to the sale amount of the vessel. In the alternative, should this Court grant  
2 Plaintiff's motion, Defendants respectfully request that this Court put some limitation on  
3 Plaintiff's ability to move for extensions of time for the remainder of the case and delay  
4 this matter indefinitely.

5  
6 Dated: 14 March 2006

BIRNBERG & ASSOCIATES

7  
8 By: s/Cory Birnberg  
Cory A. Birnberg

9 BIRNBERG & ASSOCIATES  
10 CORY A. BIRNBERG  
703 Market Street Suite 600  
11 San Francisco, California 94103  
Telephone Number: (415) 398-1040  
12 Facsimile Number: (415) 398-2001  
Email: [birnberg@birnberg.com](mailto:birnberg@birnberg.com)  
13 California State Bar No. 105468  
14 Attorneys for Defendants  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 BIRNBERG &  
ASSOCIATES  
27 703 MARKET STREET  
SUITE 600  
SAN FRANCISCO  
CA, 94103  
TEL (415) 398-1040  
FAX (415) 398-2001  
28